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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 320

MARK WILLIAM SACKETT,

Appellant,

vs.

STATE OF LOUISIANA

APPEAL FROM THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS, APPELLATE DIVISION, STATE OF LOUISIANA

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

STATEMENT AS TO JURISDICTION

MAURICE B. WOULFE,
RICHARD A. DOWLING,
JAMES O'CONNOR, JR.,
EDWIN I. MAHONEY,
GEORGE M. BROOKS,
Counsel for Appellant.

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CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA, APPELLATE DIVISION NUMBER ONE

Number: 138-768

STATE OF LOUISIANA,

Appellee,

vs.

MARK WILLIAM SACKETT,

Appellant

STATEMENT AS TO JURISDICTION

In compliance with Rule 12(1) of the Supreme Court of the United States, as amended April 6, 1942, Appellant files his statement disclosing the basis upon which he contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under 28 U. S. C., paragraph 1257(2).

Legislation Drawn in Question

This case draws into question the validity of State Legislation, to wit, Revised Statutes of Louisiana, Title 14, Sec. 120, which reads as follows:

"PP. 120 Corrupt influencing:

Corrupt influencing is the giving or offering to give anything of apparent present or prospective value to,

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or the accepting or offering to accept anything of apparent present or prospective value by, any person, with the intention that the recipient shall corruptly influence the conduct of any of the persons named in Article 118 (public bribery) in relation to such person's position, employment or duty.

Whoever commits the crime of corrupt influencing shall be fined not more than five hundred dollars, or imprisoned for not more than one year, or both."

That the decision of the Criminal District Court for the Parish of Orleans, State of Louisiana, Appellate Division Number One, in the above entitled case was a judgment of the highest Court in the State of Louisiana, in which a decision of the case could be had, although such Court is not the highest Court in the State of Louisiana. The decision of said Criminal District Court for the Parish of Orleans, State of Louisiana, Appellate Division Number One, was handed down and became final on June 8, 1953.

The decree and judgment of the Criminal District Court for the Parish of Orleans, State of Louisiana, Appellate Division Number One, was not susceptible of further review in the State Court, and all proper steps were taken to secure further review in presenting an application for Writs of Certiorari and Mandamus to the Supreme Court of Louisiana, which refused said application for writs applied for by Appellant on June 12, 1953. (Appendix A.)

A Petition for Stay of Execution of said decision was presented to said Supreme Court of Louisiana, on June 15, 1953; an order for said Stay of Execution was granted and signed on said day by the Chief Justice of the Supreme Court of Louisiana, granting to Appellant a delay of ninety (90) days in which to apply to the Supreme Court of the United States for relief herein.

Statement of Case

The State filed an Information in the Criminal District Court for the Parish of Orleans, State of Louisiana, against

Appellant, an Attorney-at-law, on June 6, 1952; wherein he was charged with violation of Revised Statutes of Louisiana, Title 14, Sec. 120. Upon Appellant's plea of "not guilty", a trial was had, before the Court, without a jury, Appellant not being entitled to a jury trial for said offense under the Constitution of Louisiana (1921), Art. VII, Sec. 41, which provides as follows:

> "All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury."

Appellant was tried and found guilty by said Court, and sentenced to pay a fine of Two Hundred Fifty Dollars and 00/100 ($250.00), or serve in default thereof, six months in the Parish Prison in New Orleans.

An appeal was then timely taken to the Appellate Division of the Criminal District Court for the Parish of Orleans, State of Louisiana, Appellate Division Number One, which Court affirmed the judgment of the trial Court. This appeal was taken under Article 7, Paragraph 83 of the Constitution of Louisiana (1921), which provides as follows:

> "In all cases tried before the judges of the said Criminal District Court in which an appeal does not lie to the Supreme Court, and in cases tried before the Juvenile Court, an appeal shall lie on questions of law and fact to two or more of the Judges of the said Criminal District Court as may be prescribed by said Court; . . ."

A Petition for Rehearing was timely filed, and same was decided against Appellant by said Court on June 8, 1953.

Appellant then applied to the Supreme Court of Louisiana for Writs of Certiorari and Mandamus, under its Supervisory Jurisdiction, which application was refused by said Court on June 12, 1953.

How Issues Raised

After trial, and before sentence, before the Trial Court, Appellant filed his Motion in Arrest of Judgment, wherein the Federal Question, the Violation of Appellant's Constitutional rights, was raised, and passed upon by said Court, and decided against Appellant, said Court giving no written reasons for its decision. Said question was again urged before and passed upon by the Criminal District Court for the Parish of Orleans, Appellate Division Number One, and decided against Appellant. Said question was again raised in the Petition for Rehearing filed before said Court and again passed upon and decided against Appellant.

Grounds Sustaining Jurisdiction

1

The Statute in question, namely, Louisiana Revised Statutes, Title 14, Sec. 120, has been construed and applied in a manner by the Courts of Louisiana, as to bring it in conflict with the Fourteenth Amendment to the United States Constitution.

2

The right of Appellant to be properly informed of the nature and cause of the accusation against him, as guaranteed him by the Fourteenth Amendment to the United States Constitution, by the decision of the State Courts, has been denied him.

The vagueness of said Statute is recognized by the Criminal District Court, Appellate Division Number One, in its opinion and judgment, rendered on the Petition for Rehearing filed before said Court.

The cases believed to sustain the jurisdiction of the Supreme Court of the United States, are as follows:

Niemotko vs. State of Maryland, Md. 1950, 71 S. Ct. 325, 340 U. S. 268; 95 L. Ed. —.

Bacon vs. State of Texas, 163 U. S. 207, 215; 16 S. Ct. 1023; 41 L. Ed. 132.

U. S. vs. Reese, 92 U. S. 214; 23 L. Ed. 563, wherein the Supreme Court of the United States stated:

> "Every man should be able to know with certainty when he is committing a crime."

The same case declared further:

> "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of government."

Also, *U. S.* v. *Cardiff*, 72 S. Ct. 189, the Court therein denounced the uncertainness of the State in these words, as follows:

> "The vice of vagueness in Court Statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited. Words which are vague and fluid, U. S. vs. L. Cohen Gro. Co. 255 U. S. 81, 41 S. Ct. 298, 65 L. Ed. 516, may be as much of a trap for the innocent as the ancient laws of Caligula."

Also, *Joseph Burstyn, Inc. v. Wilson, et al.*, 343 U. S. 495, 72 S. Ct. 777.

Also, *State* v. *Whitlock*, 193 La. 1044, 192 So. 697, which case states as its authority the case of *U. S.* v. *Reese*, 92 U. S. 214, 23 L. Ed. 563, and which case stated as follows:

> "It has long been the rule, constantly adhered to, that criminal statutes must receive strict interpretations, and that such statutes cannot be extended to cases not

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> included within the clear import of their language. In short, that no act is a crime which is not clearly and unmistakably made a crime by statute."

and further at Page 377 of 13 So. (2d.):

> "* * * at Page 1054, 192 So. at Page 700, the Court cited State v. Maitrejean and State v. Harris and Rhodes, 193 La. 824, 192 So. 361, and, referring to the decision in those cases, declared: 'We pointed out that only the Legislature, under the Constitution was granted the power and authority to define what acts constituted criminal offenses and to provide the penalties for the violation thereof. So that, in the instant case to construe the words 'or otherwise' as used in (Section 861 of the Revised Statutes) Article 786 of Dart's Criminal Statutes, as the State has asked us to do, would be indirectly authorizing the various judges, district attorneys, grand jurors and petit jurors to define what acts they considered were prohibited by these two words of the statute. This, of course, would lead to a result equally as unsatisfactory as the present unfortunate situation, which results from the statute being inadequate to cover all cases where persons attempt to unduly influence jurors in the just and honest performance of their official duties'."

WHEREFORE, the Supreme Court of the United States should take jurisdiction of this cause for final hearing, in accordance with the rules of the Court, because the Criminal District Court for the Parish of Orleans, State of Louisiana, and the Criminal District Court for the Parish of Orleans, State of Louisiana, Appellate Division Number One thereof, disposed of important and substantial Federal Questions in a way that is in conflict with the Constitution of the United States and applicable decisions of the Supreme Court of the United States, and has so radically departed from the Constitution of the United States, and the sound

course of judicial procedure as to call for exercise by the Supreme Court of the United States of its power of supervision and review to halt the same.

Respectfully submitted,

MAURICE R. WOULFE,
RICHARD A. DOWLING,
JAMES O'CONNOR, JR.,
EDWIN I. MAHONEY,
GEORGE M. BROOKS,
Counsel for Appellant.

APPENDIX "A"

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

MARK WM. SACKETT

No. —

Vio. —

Section "A"

OPINION OF THE COURT

By the Court:

The undersigned member of the Appellate Division is respectfully of the opinion that the judgment and sentence of the lower court be affirmed for the following reasons to-wit:

1. There are no errors of law herein which appear to have caused a miscarriage of justice or which are prejudicial to the substantial rights of the accused, or constitute a substantial violation of constitutional or statutory right.

On the question of facts:

Two of the principal witnesses for the State are convicted felons and from the circumstances must be assumed to have testified from strong motives of interest. The undersigned, however, is respectfully of the opinion that these witnesses testified substantially to the truth for the following reasons:

The transaction or transactions charged are alleged to have occurred at the Fifth District Police Station on January 21st, 1951. A few days after said date when said two witnesses had been released they visited the office of the attorney, Mr. Grady Durham, who represented them on their trial for the robbery for which they had been confined in the Fifth District Police Station.

Counsel for appellant cross-examined each of these two witnesses at length relative to whether or not upon this visit or any visit to the office of their attorney, Mr. Durham, they had informed Mr. Durham as to the transactions or alleged transactions which they claimed to have had with appellant at the Fifth District Police station. Each of the witnesses on said cross-examination testified that a few days after June 21st, 1951, upon the occasion of their visit to Mr. Durham that they had informed Mr. Durham that appellant had asked them for money with which to pay the State witness, Keeling.

Mr. Durham was called to the witness stand by appellant, as a witness for appellant, obviously for the purpose of contradicting these two witnesses on this point, and Mr. Durham confirmed and corroborated the testimony of said two witnesses on the point that they had stated to him in his office a few days after June 21st, 1951 that appellant had solicited them for money to pay the said Keeling.

A few days after June 21st, 1951, the said two witnesses had no interest in making said statements to Mr. Durham other than to mention what some other attorney had proposed to do for them in the case they were then consulting Mr. Durham about. The witnesses were not in disagreement with or hostile to appellant. The alleged transaction was then a matter of no moment or importance to anyone.

It, therefore, seems to the undersigned that the only explanation for the witnesses relating to Mr. Durham in his office that a few days before, at the police station, appellant had spoken to them about getting money from them for Keeling was that appellant had actually so spoken to them a few days before at the police precinct station.

Mr. Durham who gave this testimony was not only a witness for appellant but there appears to be no reason to believe that he had any interest other than to testify to the truth. As a matter of fact Mr. Durham was testifying against his own interest because he had made affidavit that the substance of this charge was newly discovered evidence as of April, 1952.

The two witnesses in question were also corroborated by Mr. Salvadore Anselmo, also an attorney at law and appar-

ently without interest in this case. There can be no doubt but that Mr. Anselmo met appellant at the police precinct station on June 21st, 1951, and spoke to appellant. Mr. Anselmo testified that appellant spoke to him about the two witnesses who were then detained in the police station and the charge against them and giving the victim of the robbery some money to have his mouth medically treated.

For these reasons it is respectfully the opinion of the undersigned that the State proved the case against appellant beyond a reasonable doubt and the judgment and sentence of the lower court should be affirmed.

(Signed) Wm. J. O'Hara,
Judge, Section "A";
(Signed) Fred W. Oser,
Judge, Section "C";
(Signed) George P. Platt,
Judge, Section "B".

New Orleans, La., May 8th, 1953.

APPENDIX "B"

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA

No. —

Vio. —

Section: "A"

STATE OF LOUISIANA

vs.

MARK WM. SACKETT

REASONS FOR JUDGMENT ON MOTION FOR RE-HEARING

Counsel for appellant stress the claim that the Information is fatally defective because the Information omits the words "corruptly influence" which words are in the statute.

The Information alleges with particularity all of the essential elements necessary to constitute the crime defined by the statute, and the Information sets out with particularity the acts and conduct of the defendant which constitute the "corruptly influencing."

If the Information simply followed the language of the statute, the Information would be fatally defective because of vagueness and such an Information would state merely conclusions of law. The statute does not particularize one offense but applies to all possible violations of its provisions hence an information drawn under this statute to be a valid information must particularize the acts and the conduct which the prosecution charges constitute "corrupt influence" in this case so that appellant may know what acts and conduct or alleged acts and conduct he is called upon to defend. The particularized acts and conduct of the defendant and not words or phrases that are legal conclusions are essential to the validity of the information.

Section "A" recently arrested judgment in State vs. Kelly because of the failure of the prosecution to particu-

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larize in the Bill of Information the acts and the conduct which the prosecution charges the defendant committed and which they allege constitute the violation and only recently reviewed the law on this subject matter.

Because of the extreme gravity of the case the court has listened attentively to arguments of counsel for appellant on their motion for a re-hearing. The court took cognizance of every fact and factor that was mentioned by counsel in their argument on this motion when this court rendered its original judgment herein.

This court finds it impossible to regard James as a witness whose credibility is free from suspicion. James was a client of appellant and appellant was James' attorney.

James was in the Fifth District Station after 7:30 P.M. and he does not know what, if anything, happened before 7:30 P.M.

Secondly the words that passed between the two State witnesses and appellant in the presence of James were utterances of no interest or moment to James at the time, and those utterances, as of that time, were just as casual as they were inconsequential as far as James was concerned at the time.

James was not called upon to recall the incident until a long time had elapsed and James would have to have supernatural powers of recollection to be able to recall minutely and with precision or with any degree of accuracy a casual and inconsequential event that had happened many months before with nothing occurring in the interim to give him any occasion to recall the incident.

The court is not disposed to be influenced by what one prisoner may tell or may have told another prisoner in the Parish Prison during their confinement, none-the-less, this court seriously studied and seriously considered the testimony of the witness Shelton and found that this testimony does not bear upon the testimony of the two witnesses, Mr. Grady Durham, Attorney at Law, and Mr. Salvador Anzelmo, attorney at law, witnesses whose testimony the court believes it can accept with assurance.

According to Mr. Durham's testimony a few days after June 21, 1950, when the two State witnesses told their at-

torney (Mr. Grady Durham) that a certain conversation transpired between them and the appellant on June 21, 1950, there was not then in existence any of the motivation for falsity which existed at the time of the trial of this case, and at that time with no motivation of interest except their interest to recite to their attorney what another attorney had proposed to them, these two witnesse told the same story then as they told upon the witness stand on the trial of this case.

Then there is the testimony of Mr. Anzelmo, a brother attorney and certainly without any interest except to tell the truth. Mr. Anzelmo's testimony is at variance with that of the witness James and contradicts appellant as a witness on the trial of this case.

Mr. Anzelmo testified that at the Fifth District Police Station on the date in question that appellant spoke to him, Anzelmo, about the witness Keeling and about giving the witness Keeling some money to have his mouth fixed and Anzelmo could represent Creighton and Hayes in court and he, appellant, would take care of matters outside of the court.

Obviously it was most unpleasant and difficult for Mr. Anzelmo to tell the truth herein. How much more difficult would it have been for him to falsify such vital facts against a brother attorney?

While the court viewed the testimony of all the Hayes persons with the utmost distrust and upon their testimony would convict no one the court could not help but remark the testimony of Mrs. Hayes on the point of the visit or alleged visit of appellant to the Hayes' home.

Mrs. Hayes testified that she received appellant at the door when he called and had him enter the home and while appellant and her husband engaged in conversation she, Mrs. Hayes, went to another part of the house and she had no knowledge whatsoever of the purpose of appellant's visit or what appellant and her husband discussed.

It occurred to the court that if this witness was falsifying out of the whole cloth as she is charged she would have pretended that she was present when appellant and her husband discussed their business and would have been a wit-

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ness to everything that her husband testified to. But she testifies that she knows nothing of the purpose of appellant's visit other than the fact that he did visit their home.

The application for a re-hearing filed herein is denied.

(Signed) Wm. J. O'Hara,
Judge, Section "A".
(Signed) Fred W. Oser,
Judge, Section "C".
(Signed) George P. Platt,
Judge, Section "B".

New Orleans, La.,
June 8th, 1953.

Clerk's Office, August 11th, 1953. A true copy. Jack J. Graven, Deputy Clerk, Appellate Division, Criminal District Court. (Seal.)

Filed August 11th, 1953. Jack J. Graven, Minute Clerk, Appellate Division No. I.